

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROBERT R. TOLAN, MARIAN TOLAN,
BOBBY TOLAN, AND
ANTHONY COOPER,
Plaintiffs,

VS.

JEFFREY WAYNE COTTON,
JOHN C. EDWARDS,
Defendants.

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Civil No. 4:09-cv-01324

JURY TRIAL DEMANDED

EMERGENCY MOTION FOR CLARIFICATION

Robert R. Tolan, Marian Tolan, Bobby Tolan, and Anthony Cooper file this Emergency Motion for Clarification of Final Summary Judgment.

1. On March 31, 2012, this Court issued a Final Summary Judgment [Doc. 82]. The Final Summary Judgment grants the Motion for Summary Judgment on the defense of qualified immunity [Doc. 67] filed by defendants Jeffrey Wayne Cotton and John C. Edwards.

2. On March 31, 2012, the Court issued its (Corrected) Memorandum and Order of Jeffrey Wayne Cotton's and John C. Edwards's Motion for Summary Judgment.

3. Although the Final Summary Judgment and the (Corrected) Memorandum and Order grant only the Motions for Summary Judgment or the defense of qualified immunity filed by Jeffrey Wayne Cotton and John C. Edwards, the Final Summary Judgment states "This is a Final Judgment." The City of Bellaire is another defendant in the case which has not filed a Motion for Summary Judgment. There are no claims by the plaintiffs against the City of Bellaire that are adjudicated in the (Corrected) Memorandum and Order.

4. For these reasons, the Final Summary Judgment should not actually be final.

5. “A dismissal of claims against some, but not all, defendants is not a final appealable judgment unless, pursuant to Rule 54b in the Federal Rules of Civil Procedure, the District Court concludes there is no justification for delaying an appeal and specifically directs entry of judgment.” *Elizondo v. Crain*, 671 F3d 506, 509 (5th Cir. 2012).

6. Neither the Final Summary Judgment nor the (Corrected) Memorandum and Order contain a conclusion by the Court that there is no justification for delaying an appeal and specifically directs entry of judgment. The Final Summary Judgment does however reference that it is a “Final Judgment.”

7. Plaintiffs respectfully request clarification from the Court as to whether there is indeed a final and appealable summary judgment, or, because there is another defendant for whom summary judgment has not been granted, this case is not at this time appealable.

8. In the alternative, plaintiffs respectfully request that the Court issue an order concluding that there is no justification for delaying an appeal and specifically directing entry of judgment.

9. Plaintiffs respectfully submit to the Court that clarification of this issue will aid all of the parties, this Court, and the Fifth Circuit in understanding how this case proceeds to the next phase.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

This will confirm that counsel for plaintiffs attempted to confer with counsel for defendants in this case, William S. Helfand, by telephone and e-mail but do not at this time know if he is opposed to unopposed to the motion.




George R. Gibson

CERTIFICATE OF SERVICE

I certify that a copy of Emergency Motion for Clarification was served on counsel of record as shown below on April 26, 2012.

William S. Helfand
Norman Ray Giles
Chamberlain, Hrdlicka, White, Williams & Martin
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By Facsimile 713.658.2553
and First Class Mail



George R. Gibson

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ORDER

The Final Summary Judgment [Doc. 82] issued on March 31, 2012, grants summary judgment in favor of Jeffrey Wayne Cotton and John C. Edwards against all claims made by the plaintiffs, Robert R. Tolan, Marian Tolan, Bobby Tolan, and Anthony Cooper. Because of a third defendant, the City of Bellaire, for whom summary judgment has not been granted, while the Final Summary Judgment may be final as to all claims brought against defendants Jeffrey Wayne Cotton and John C. Edwards, it is not a final judgment of the entire case and is not appealable at this time. Such final summary judgment will not be appealable until the claims by plaintiffs against the City of Bellaire are adjudicated.

SIGNED _____ day of _____, 2012.

UNITED STATES DISTRICT COURT